1:Vaillant A-5 (1928-1936)1941 NU7 Aztec NU7

tated against the social advantages of the gathering. To steal corn, the staple of life, when growing in the field, was a serious offense, demanding the death penalty or slavery, but a wayfarer might with impunity satisfy his hunger by plucking ears from rows adjacent to the road. To filch gold, silver and jade, precious substances reserved for religious ornaments, was also a mortal crime.

Murder, even of a slave, brought the death penalty. Rebels and traitors received the same fate, but kidnapers were sold into slavery. Drunkenness was a serious crime except at prescribed ceremonial occasions. Social disapproval, public disgrace, even death by stoning or beating, were penalties suffered by the intemperate. However, the old of both sexes, who had fulfilled their tribal obligations, were allowed great latitude in their potations.

The witch or practicer of black magic was sacrificed, and death was likewise the lot of him who impersonated a high official. A slanderer had his lips cut off and sometimes his ears as well. Brawling and fighting in the market place were dealt with severely, but in an ordinary case of assault the assailant paid for the cure of the assailed and for any damage done. Adultery was punished with great severity, even death, when committed outside the pale of the divorce laws. Hanging was the usual penalty for violation of the incest laws, and sodomy was punished with revolting brutality.

Thus reduced to cited instances, Aztec law was brutal. Actually, from childhood on, the individual grew up into correct social behavior; the violator of the code met with serious consequences. All people had some kind of personal property, but land belonged to the tribe and only its produce to the individual. Therefore, the elaborate legislation

16:Bandelier E-4 (no date) 1880 NU7 Aztec NU7

was disabled or until he voluntarily withdrew.[192] Slanderers, however, were punished by the kin, having their lips cut off or publicly sliced.[193] Homicide, and murder, were invariably punished by death.[194]

Intemperance in public was free to people more than seventy years old, while if grown men below that age appeared in a drunken state (festivities excepted), their heads were shorn clean in punishment. But whenever the delinquent was a chief he was publicly degraded; and any officer was forthwith removed and relieved of his duties.[195] Women who attempted to act as

[192] *Gomara* (Vedia I, p. 440): "no traen armas sino en la guerra, y allí averiguan sus pendencias por desafios." *Bartolomé de las Casas* ("*Historia apologética de Indias*," cap. 213 and 214. Vol. VIII of Lord Kingsborough, note XLV, p. 134). Bystanders interfered, separating the parties, if they came to blows. *Motolinia* (Trat. I, cap. II, p. 23), says that such strife and quarrels only occurred when they were drunk: "Y fuera de estar beodos son tan pacíficos, que cuando riñen mucho se empujan uno á otro, y apenas nunca dan voces, si no es las mugeres que algunos veces riñendo dan gritos." (Cap. XIV, p. 76): "Sin rencillos ni enemistades pasan su vida." *Torquemada* (Lib. XII, cap. XV, pp. 306 and 309). *Herrera* (Dec. III, Lib. IV, cap. XVI, p. 136).

[193] *Zurita* ("Rapport," etc., pp. 129 and 130) speaks only of children, punished by splitting the lips for lying. This is copied by *Herrera* (Dec. III, Lib. IV, cap. XVI, p. 136) and *Torquemada* (Lib. XIII, cap. XXX, p. 478). *Velancurt* (Part II, Trat. III, p. 48), however, declares this punishment to have been meted out to adults, adding: "to-day there would be many without lips, so much do they lie." *Gomara* ("*Conquista*," p. 438, Vedia I) speaks of this punishment as having been instituted by Quetzalcohuatl, and for adults as well as for children. This, attributing it to Quetzalcohuatl, is an evident error. Compare *Sahagun*, (Lib. III, cap. III, p. 244). *Clavigero* (Lib. VII, cap. XVII, p. 489) is positive about adults. *Bustamante* ("*Tezcoco*," p. 196) says that slanderers were killed.

[194] *Las Casas* ("*Historia Apologética*," cap. 213, Kingsb: Vol. VIII, p. 123): "Destos era el que mataba á otro, el cual moria por ello." *Gomara* (Vedia I, p. 442): "Matan al matador sin excepcion ninguna." *Mendieta* (Lib. II, cap. XXIX. p. 136): "Sentenciaban á muerte á los que cometian enormes y graves delitos, asi como á los homicidos. El que mataba á otro, moria por ello." *Torquemada* (Lib. XII, cap. VIII, p. 387), almost copies the preceding. Nearly all the authors agree on this point, except, according to *Mr. Bancroft* ("*Native Races*," Vol II, p. 450, note 59), Durán, who is said to assert: "that the murderer did not suffer death, but became the slave for life of the wife or relatives of the deceased." In this Durán agrees with the "*Codice Ramirez*." *Velancurt* ("*Teatro*," Vol. I, p. 465) says that even for murder committed in a drunken state, the culprit was killed (hung). *Clavigero* (Lib. VII, cap. XVII, p. 484) briefly states that all homicide was punished with death. As to the manner of execution, it is variously stated. It would be unsafe to attempt going into details.

[195] It is well known that there was an idol for the drunkards. *Sahagun* (Lib. I, cap. XXII. p. 40) even gives the names of thirteen "dioses del vino." According to *Gregorio Garcia* ("*Origen de los Indios*," etc. Lib. III, cap. II, §VI, p. 93, who mentions as authority *Fray Esteban de Salazar*, "*Historia, ó Relacion de la Teologia de los Indios Mexicanos*" lost in a shipwreck, 1564), they had three hundred gods of the drunkards "que de solos los borrachos tienen 300 Dioses." See also *Torquemada* (Lib. VI, cap. XXIX, p. 38) and others. The punishments are given by me after *Mendieta* (Lib. II, cap. XXX, pp. 139 and 140). Copied textually by *Torquemada* (Lib. XIV, cap. X. p. 550). Besides these, *Zurita* (pp. 110–112) asserts the same, even more explicitly, and he is followed by *Herrera* (Dec. III, lib. IV, cap. XVI, p. 136). *Velancurt* (Vol. I, p. 466). *Clavigero* (Lib.

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calpulli, and especially the slaying, wilful or accidental, of members of one kin by those of another, became the cause of a claim by the offended calpulli upon that of the offender.[189] This claim was submitted to the tribal council by the "speaker" of the complainant kinship. He produced his evidence, sometimes even in the shape of paintings, not so much to prove the facts as to sustain his claim. From the opposite side, the "speaker" defended the interests of his clan, and he also supported his pleadings with whatever testimony he might command.[190] The remaining "tlatoca" listened attentively to both parties, and when the argument was concluded, they deliberated among

[189] *H. H. Bancroft* ("*Native Races*," Vol. II, pp. 458 and 459) was the first, to my knowledge, to call attention (in note 39) to the difference of opinion among authors, in regard to the punishment of murderers. He refers to the unpublished parts of the work of *Fray Diego Durán*. We find in the *Codice Ramirez* ("*Tratado de los Ritos y Ceremonias y Dioses que en su Gentilidad usaban los Indios desta Nueva España*," Cap. I, p. 107): "El matar uno á otro era muy prohibido, y aunque no se pagaba con muerte, hazian al homicida esclavo perpétuo de la mujer ò parientes del muerto, para que les sirviesse y suppliesse la falta del muerto, ganando el sustento de los hijos que dejaba." This is very interesting since it shows the autonomy of the kins. The murderer stood, towards the calpulli of the slain, in the same relation as, among northern Indians, a prisoner of war did towards the hostile tribe. Both could be adopted, and this condoned the deed. The offending kin lost one member; the offended kin obtained one in return for the one that had been killed. However, this was only in exceptional cases: the rule, as established by the majority of authors was that life alone could atone for life. In the same manner, and under the same head, the contradictory reports must be placed, about the punishment of theft, which have already been noticed. There are consequently, for each crime or kind of crime, two classes; one, of such as were committed within the kin, and the other, of such as were committed without.

[190] *Sahagun* (Lib. VIII, cap. XV, p. 304): "Otra sala del palacio se llamaba teccalli, ó tecalco. En este lugar residian los senadores y los ancianos para oïr pleitos y peticiones, que les ofrecian la gente popular, y los juéces procuraban de hacer su oficio con mucha prudencia y sagacidad, y pres-to los despachaban; porque primeramente demandaban la pintura en que estaban escritas ó pintadas las causas, como hacienda, casas, ó muebles; y despues cuando ya se queria acabar el pleito, buscaban los senadores los testigos." I quote this passage, although it applies particularly to the judicial functions of the council, because the mode of proceedings is therein illustrated. *Veytia* (Lib. III, cap. VII, p. 297), speaking of Texcuco, is very positive: "Habia tambien abogados y procuradores; á los primeros llamaban tepantlatoani, que quiere decir *el que habla por otro*. . . . ." I need not recall here that "tlatoani" (plural "tlatoca") was the title of the members of the council, and that consequently these "attorneys" belonged thereto. The same statement (derived from Veytia also) is found in *Bustamante* ("*Texcoco*," Parte II, cap. VII, p. 191). These two works contain (in the chapters indicated) the most detailed information as to the proceedings. Still, there is evident confusion in the minds of these authors in general: they fail to discriminate between arbitration and tribal jurisdiction. The bulk of the other authorities commit the same mistake. Compare *Burtis* ("Rapport," pp. 103-105), whom *Mendieta* (Lib. II, cap. XXVIII, p. 126) has almost verbatim copied. *Torquemada* (Lib. XI, cap. XXVI, pp. 304 and 305).

The absolute lack of division of powers which characterizes so well ancient Mexican society is well established by *Veytia* (III, cap. VII, p. 306), speaking of what he